IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3214 of 2004

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RAJENDRAGORAKHNATHBAVISKAR - Petitioner(s)

Versus

CHIEF METROPOLITAN MAGISTRATE &2 - Respondent(s)

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Appearance :

MR CHETAN K PANDYA for Petitioner No(s).: 1.

MR JB PARDIWALA for Respondent No(s).: 1.

MR. U.R. BHATT, ASSISTANT GOVERNMENT PLEADER for Respondent No(s).: 2.

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CORAM :HON'BLE DR.JUSTICE J.N.BHATT

Date : 04/07/2005

ORAL JUDGMENT

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1. Upon joint request, the matter is taken up for final hearing. There is also consensus that the point and focus in this petition has been resolved in several decisions of this Court as well as the Hon'ble Apex Court.

2. The petitioner has prayed for quashing the order passed by respondent No.1 – Chief Metropolitan Magistrate at Ahmedabad, rejecting the petitioner's request for the grant of Higher Grade Scale, though, he had completed nine years of service and had also cleared Higher Standard Departmental Examination. The entire claim in this petition is founded upon the Government Resolution dated 16.8.1994 wherein in Paragraph-3, Clause-II, on completion of certain years service, in the same cadre or on the same post, Higher Grade Scale has been provided.

3. It is very clear from the impugned order of respondent No.1 that the entitlement for Higher Grade Scale is denied only on the ground that the completion of nine years service on the same post or cadre has not taken place in the same office in the same District. It is not in dispute that the period of nine years and another condition of passing of Higher Standard Departmental Examination is satisfied. The objection, which has created obstacle in getting the same and entitlement in so far as the petitioner is concerned in terms of the same order of ld. Chief Metropolitan Magistrate – respondent No.1, is that the completion of the prescribed spell of service of nine years is not completed in the same District which is never in the contemplation of the relevant resolution of the

Government. It appears that the view taken by respondent No.1 is not only erroneous but runs counter to the settled above proposition of law enunciated in various decisions of this Court, as well as, of the Hon'ble Apex Court.

4. It must be remembered here that the benefit of Higher Grade Scale is designed and formulated to obviate frustration and stagnation on the same post or cadre after for certain defined period of service. It has nothing to do with the completion of the defined period for entitlement or has nothing to do whether the entire spell of service prescribed is noted or done in the same office or District or not. The impugned order of respondent No.1 appears to have been reached by this consideration which is wholly extraneous to the proposition and policy of the Government in the relevant aforesaid Government Resolution.

5. In the opinion of this Court, the view taken in the impugned order is not sustainable and being contrary to the propounded pronouncements and deserves to be quashed.

6. Our attention has been drawn to the Division Bench decision to which myself was a party rendered in Paragbhai Bhagwandas Patel and Others Vs. State of Gujarat and Others, L.P.A. No.229 of 2003 with L.P.A. No.230 and 231 of 2003 on 5.5.2003 wherein similar dispute, as in this petition, has been dealt with and expounded with the help of the pronouncement of the Hon'ble Apex Court and the present case is directly covered by the said decision. It is, therefore, not necessary to meticulously further reiterate the same proposition which has been very well established, accepted and

approved by the Hon'ble Apex Court. In this set of facts, the petition is quite justified and deserves to be allowed.

7. Accordingly, the petition is allowed. The impugned orders of respondent No.1 dated 11.9.2001 and 4.2.2002 are quashed and set aside and respondent No.1 is directed to pass the order in the light of the observations made hereinabove and forward the orders for entitlement of Higher Grade Scale as early as possible, so that arrears could be, also, paid earlier. Petition shall stands allowed. Rule made absolute with costs.

[DR. J.N. BHATT, J.]

#Dave